OPINION #1

11H

February 7, 1955

Attorney General's

Elmer P. Bourque
Law Assistant

Adelard E. Cote, Labor Commissioner
15 Pleasant Street
Concord, N. H.

Dear Mr. Cote:

This is in response to your letter of February 1, 1955 which raises several questions concerning the administration of Revised Laws, chapter 214, as amended by Laws of 1951, chapter 248. Section 1 of this chapter provides as follows:

" 1. Regulation by Commissioner of Labor. The rate per hour of the wages paid to mechanics, teamsters, chauffeurs, and laborers employed in the construction of public works by the State of New Hampshire, or by a county or town, or by persons contracting or sub-contracting for such work shall not be less than the rate or rates of wages to be determined by the commissioner of labor as hereinafter provided; provided, that the wages paid to mechanics, teamsters, chauffeurs, and laborers employed on said works shall not be less than the wages paid to said employees in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to said employees shall not be less than the wages paid to said employees in the municipal service of the town paying the highest rate; provided, further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in

certain trades and occupations by collective agreements or understandings between organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established; provided, further, that in towns where no such rate or rates have been so established, the wages paid to said employees on public works, shall not be less than the wages paid in said towns to the employees in the same trades and occupations by private employers engaged in the construction industry. This section shall also apply to regular employees of the state, or of the county or town when such employees are employed in the construction, addition to, or alteration of said works for which special appropriations are provided."

The underscored portion of the above section is the subject of certain questions raised in your letter. You indicate that as a result of an interpretation placed upon this proviso by an opinion of this office, dated July 28, 1949, you are encountering difficulty in establishing rates.

The aforesaid opinion requires that before collective bargaining rates become determinative agreements or understandings must have been reached between organized labor and employers in the towns in question specifically in relation to work to be performed in the particular town or city under consideration.

In the absence of these circumstances collective bargaining rates may not be used as a basis in establishing minimum rates. In such circumstances the minimum rate must be based upon the rate or rates paid by private employers in the construction industry or the rate or rates paid to corresponding employees in the municipal service in the town or town where said works are being constructed.

If in the town under consideration no private employers are engaged in the construction industry and no municipal employees are engaged in corresponding trades or occupations the statute does not contemplate the establishment of minimum rates by the Commissioner of Labor with respect to such trades and occupations.

You state that in many instances international labor organizations grant local unions jurisdiction covering several towns and cities, not confining it to any particular town or city. You further state that it has been the practice of the department to use collective bargaining agreements as a basis in fixing minimum rates for public works being performed in towns covered by the jurisdiction of a local union. In view of the 1949 interpretation of the statute in question this procedure appears to be erroneous with respect to towns or cities where no union contractors are located.

The mere fact that this procedure has been followed and in certain instances no appeal ensued would not justify establishing the same rates when subsequent requests are received from the same towns. The fact that no appeal was taken cannot be construed as affirming the validity of rates obviously established by an erroneous procedure. Upon the receipt of a subsequent request new rates should be established in accordance with the proper procedure.

To summarize, the statute provides that certain minimum rates shall be paid in public works projects. In ascertaining the minimum rate three factors must be considered:

(1) the rates covered in collective agreements or understandings between organized labor and contractors located in the town or town in question.

(2) the rate or rate paid in said towns to employees in the same trades or occupations by private employers engaged in the construction industry.

(3) the rates paid to said employees in the municipal service in the town or towns in question.

If in the town where the work is to be performed none of these relationships exist you haveno basis for establishing a minimum rate and obviously are in no position to do so. If on the other hand any of these relationships do exist a minimum rate must be established using the rate derived from the particular relationship as a basis.

You state that "if it becomes necessary to follow the letter of the ruling of July 28, 1949, we see no alternative but to advise the agencies requesting wage rates in cities and towns where no union exists or no contracts have been signed that we are unable to furnish rates for such crafts, as we have no funds available to send a representative of the department to interview the town or city officials as to the wage rates in such occupations in the cities and towns affected." While we can appreciate the difficulties which you are encountering in ascertaining rates where no collective bargaining agreement is in effect we do not believe that this would justify ignoring these factors (i.e. wages paid by private construction

firms and by municipalities) which are specifically made applicable by the express mandate of the statute.

You also asked whether in the case of a road project which covers a considerable territory and the Highway Department saw fit to break the project into several contracts, each of these contracts should be considered as a separate public work. In order to answer this question it is necessary that we have more information. The answer might well depend upon the particular legislation under which said public work is authorized. A general answer to this question might lead to confusion when applied to a particular project.

Very truly yours,

Elmer T. Bourque
Law Assistant